



**U.S. Department of Justice**

*United States Attorney  
Eastern District of New York*

PT:CMM  
F. #2013R00948

*271 Cadman Plaza East  
Brooklyn, New York 11201*

March 30, 2015

By ECF and Fed Ex Delivery

Richard Haley, Esq.  
Haley, Weinblatt & Calcagni, LLP  
1601 Veterans Memorial Highway, Suite 425  
Islandia, New York 11749

Re: United States v. Philip Kenner  
Criminal Docket No. 13-CR-607 (JFB)

Dear Mr. Haley:

As you are aware, I am firewall counsel in the above-captioned case. In December 2014, following a privilege review, the government provided you with a flash drive containing those documents determined to be not privileged (Bates stamped PRIV-PK00001) and an accompanying password for the flash drive. Upon using the password, you were able to access the information on the flash drive, which, upon information and belief, you then forwarded to your client, Philip Kenner at the GEO correctional facility ("GEO"). As you previously indicated, the information on this flash drive was inadvertently deleted at GEO. Accordingly, enclosed please find another flash drive containing those documents determined to be not privileged (Bates stamped PRIV-PK00001). The password is the same as the previous password, which I will provide again by email.

In addition, as part of the privilege review, on February 10, 2015, I provided you with a non-password protected CD, Bates stamped PRIV-PK00003, containing documents that are "Unclear," that is, it is unclear from the face of the documents whether a privilege exists.<sup>1</sup> Upon information and belief, you also forwarded this CD to Kenner at GEO. Please be advised that Warden Zerillo at GEO contacted the undersigned because when staff at GEO reviewed the information contained on this CD, they saw that the CD

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<sup>1</sup> I had previously provided you with a password protected copy of the CD Bates stamped PRIV-PK00003; however, you indicated that you were unable to open the password protected CD.

appeared to contain material unrelated to Kenner. Warden Zerillo then forwarded me this CD. This Office inadvertently sent you the wrong CD stamped PRIV-PK00003, as the non-password protected CD marked "Unclear" did, in fact, contain information unrelated to Kenner. Accordingly, enclosed please find another CD, Bates stamped PRIV-PK00003, containing documents that are "Unclear," that is, it is unclear from the face of the document whether a privilege exists. Again, this CD is not password protected.

Please be advised that I intend to disclose to the investigative team the materials contained on the CD Bates Stamped PRIV-PK00003 on Wednesday, April 8, 2015 unless, before that date, the defendant asserts a valid basis to find the material privileged. As you are aware, all other material determined to be not privileged and/or redacted has been disclosed to the investigative team.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

LORETTA E. LYNCH  
United States Attorney

By: /s/  
Catherine M. Mirabile  
Assistant U.S. Attorney  
(718) 254-6055

cc: By ECF (without enclosures)

Clerk of the Court (JFB)

James Miskiewicz  
Saritha Komatireddy  
Assistant United States Attorneys